

## 21 C.J.S. Courts § 173

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### Courts

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### V. Rules of Practice and Procedure

#### B. Operation and Effect of Court Rules

# § 173. Construction of court rules—Mandatory and permissive rules

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

- West's Key Number Digest, [Courts](#) 85(2), 85(3)

**In determining whether a rule made pursuant to constitutional and statutory authority is mandatory or directory, the court will apply the same rules of construction that are applicable to constitutions and statutes.**

In determining whether a rule made pursuant to constitutional and statutory authority is mandatory or directory, the court will apply the same rules of construction that are applicable to constitutions and statutes.<sup>1</sup> A rule that protects important rights—such as the right to a jury trial and appeal—is generally construed as mandatory rather than directory.<sup>2</sup> An appellate court assumes that when the supreme court used both "may" and "shall" in the same rule, it meant "may" to be permissive or discretionary<sup>3</sup> and "shall" to be mandatory.<sup>4</sup> Thus, a rule is interpreted as mandatory if "shall" is the operative verb.<sup>5</sup>

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#### Footnotes

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Okla.—*Carlile v. National Oil & Development Co.*, 1921 OK 163, 83 Okla. 217, 201 P. 377 (1921).

Operation and effect of mandatory and directory court rules, see § 168.

- 2 Conn.— Cannavo Enterprises, Inc. v. Burns, 194 Conn. 43, 478 A.2d 601 (1984).
- 3 Ariz.—Alejandro v. Harrison, 223 Ariz. 21, 219 P.3d 231 (Ct. App. Div. 1 2009).
- 4 Ariz.—Alejandro v. Harrison, 223 Ariz. 21, 219 P.3d 231 (Ct. App. Div. 1 2009).
- 5 Conn.— Vargas v. Doe, 96 Conn. App. 399, 900 A.2d 525 (2006).
- S.D.—Mergen v. Northern States Power Co., 2001 SD 14, 621 N.W.2d 620 (S.D. 2001).

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